

Opening Speech
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By
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Chief Justice Alexander and distinguished judges of the Washington judiciary, thank you for your kind invitation to appear before you today.

To Justice Charles Smith, I wish to add my name to the long list of individuals who wish to thank you for your years of distinguished service.

These next few minutes, I would like to reflect on diversity in the judiciary and the legal profession in general. As a former board-certified labor and employment lawyer who provided guidance to employers on whether and how to implement a diversity program, I know I march into difficult terrain. In addition, there is a lot of ground to cover and I cannot really do justice to the topic in just a few moments - nevertheless, here are my broad stroke impressions.

I realize that there is a whole mosaic of issues involved in a diversity program, but I would like to draw your attention to a specific minority group before we discuss diversity programs more broadly.

This minority group worked mostly in manual labor jobs, often in construction. Some worked as barbers, shoemakers, stonemasons, and shopkeepers. Many found work from a padron, a labor contractor who charged a fee for sending them off to work sites. Many sent most of their wages back to their families. Dropout rates were high, and there were few high school or college graduates. Boys were encouraged to work as soon as possible, to bring money into the family; girls were kept home. They did not enter quickly into politics.

When I read this description to a group in Texas, many listeners assume I am referring to Mexican Americans. I am actually referring to Italians who immigrated to the United States in the 1880s.

This national debate regarding the pros and cons of diversity goes back in time much further than the 1880s and is as old as the founding of our nation.

In addition to discussing diversity in the judicial system in general, I have also been specifically asked to share with you my personal story and how I became the sole Hispanic on the Texas Supreme Court, and only the third Hispanic justice in the State's history.

I do so with some hesitation because in many ways my story is not unique. There are thankfully many success stories that can be told by first-generation children of new immigrants. There are, unfortunately, just as many stories of lost dreams and failures.

I hesitate to share the story as well for fear that I convey the impression that I have achieved some measure of success without any assistance. The reality is that God, my parents, my wife, and a lot of friends were there every step of the way.

I did not seek my position on the Texas Supreme Court. I was a lawyer in San Antonio enjoying the financial rewards of being a partner in an international law firm. I was active in the state bar and was a political appointee of then Governor Bush to a state agency.

I was stopped one day in the foyer of the firm's office building by a partner in another law firm. She asked whether I was interested in running for office some day. I said yes some day - little did I realize that just a couple of weeks later I would be interviewed by Governor Perry. Two weeks after that I was being fitted for a robe, learning to be a judge, hired a campaign manager and began campaigning all across Texas in a partisan election requiring me to raise over \$700,000 just for the primary. The running joke at my house is my wife still wants to know the name of that attorney who stopped me in the hallway.

Let me break down the above facts to discuss how diversity initiatives played a role.

First, how did I get to law school and why did I enroll?

I was the youngest of four children. My mother was a Mexican national. My dad was born in San Antonio, Texas. His parents were both Mexican nationals. My mother passed away when I was nine years old and my dad sold small life insurance policies door-to-door making just enough for us to get by. No one in the extended family had any connection to the legal profession.

So, who encouraged me to go to Harvard and begin exploring about law school? A lawyer in San Antonio was a Harvard alumni volunteer who agreed to interview high school students on behalf of Harvard's admission office. There and then a kid from San Antonio's Hispanic part of town was introduced to wood paneled offices and impressive rows of books.

When we talk about diversity in the legal profession - invariably the following questions arise: what can I do I am only one person? Others ask: isn't this affirmative action or reverse discrimination?

Questions regarding affirmative action are being raised in a number of quadrants. In Texas, a candidate for the Texas Supreme Court is a vocal critic of affirmative action. He has made this position a major tenant of his campaign. This public statement by a judicial candidate - essentially all but prejudging a potential case - is an unfortunate result of the United States Supreme Court's white decision - but that is a different speech.

Now there is nothing wrong with a public discourse about affirmative action - there are legitimate, legal issues that given the correct set of facts will cause a legal problem. Yet this candidate - ignoring this point - discusses how minorities should not be attending elite colleges and universities because they are unqualified to attend. He has stated that there should be a tiered system of public higher education. Indeed, he questions the type of degrees minorities should study - criticizing my decision to study medieval history as not being mainstream.

Now my point here is to encourage diversity programs, but realize that even as affirmative action is challenged, so too will diversity programs be challenged as being alleged subterfuges for disfavored affirmative action. All I can do is distinguish the two and urge you to do the same.

Well with regard to question one - what can I do? You can be just like that San Antonio lawyer volunteering your time to your alma mater and encouraging a student to enroll in college.

Or you can participate in judges in the classroom. Seeing a judge in their classroom will oftentimes be the first exposure for many underprivileged children to our profession.

The benefits from these public law-related education or pre programs are many. Pre programs teach students to reason through hard questions and listen to differing viewpoints. Pre programs supplements students' understanding of American history, government and civics.

I was fortunate enough to travel to Hungary this past June for a week as part of a program sponsored by the Florida and Texas State Bars and the United States State Department. The purpose of the program is to strengthen democratic principles in eastern European countries.

We gave pre program presentations to high school, college and law students. Also we witnessed high school students demonstrate civic action projects they created - ranging from how to persuade the local city council to lease vacant property to create a school playground - to persuading the Ministry of Education that sewage facilities were essential to a learning environment. Watching a new generation learn and exercise rights - rights excluded from their parents under the former communist regime - was truly a humbling experience and a reinforcing experience about what a truly blessed country we live in.

The Chairman of the National Endowment for the Humanities, Bruce Cole, has stated that: "we are a people of many creeds, races and religions united by common purpose into a good and great nation. Our strength lies in our shared democratic ideals."

Participating in judges in the classroom and pre programs allows us to help educate a diverse group of individuals and create an informed and participating group of citizens. When as many as one-third of some citizens believe that the court system discriminates against individuals on the basis of gender, race, or ethnic origin, positive interaction at a minority child's early age may very well change those conceptions.

Arthur Schlesinger has said that in its "militant" form, multiculturalism "becomes an alternative to, even a holdout against the concept of a common nationality." I am not sure what the Pulitzer prize-winning historian meant by militant multiculturalism, I do agree with his statement, however, that we need a little less pluribus and a little bit more unum.

I agree with that statement in the context that as we undergo a profound technological and demographic change in our country, if we are to continue to champion a democratic form of open government, our citizenry must be educated in those democratic and legal traditions. Professor Lawrence Friedman has correctly said that the "law is the glue that binds the cells of leviathan's body."

Your participation in pre will help regenerate a civil society and help rebuild the public's trust and confidence in our governmental institutions, including the judicial system.

Now that said, I wish to emphasize that I concurred, in part, with Arthur Schlesinger. I also concur, in part, with Jesse Jackson when he said: "America is not like a blanket - one piece of unbroken cloth, the same color, the same texture, the same size. America is more like a quilt - many pieces, many colors, many sizes, all woven together by a common thread."

My concern is how do we make the quilt as strong as possible. I believe that is done most efficiently at the beginning, namely when our children are still in school. A growing proportion of our young people, especially Mexican Americans, are not making a successful transition to productive adult lives. Public law related education that supplements dropout prevention programs and peer mediation is essential.

But let me now turn to what we can do at the present time to diversify our current judicial workforce and what exactly does that mean?

At the outset I need to define my use of the term diversity. Invariably some will think that the term is interchangeable with the phrase "affirmative action." The terms are not interchangeable and they are distinct.

"Affirmative action" in the context of employment or federal contracting involves numerical measures and is designed to increase the representation of minorities and women where they were previously under represented.

On the other hand, a broad definition of diversity ranges from personality and work style to all of the visible dimensions of diversity, such as race, sex or age, to secondary influences such as religion, socioeconomics and education.

I am somewhat of a pragmatic fellow. As a lawyer advising clients about diversity programs, I attempted to offer company executives practical, as opposed to theoretical or philosophical advice. As a result I offered counsel on what I believe is the business reason for diversity.

I like Texas Instrument's Chief Executive Officer's statement on diversity: "diversity humanizes the workplace and opens it up to new ideas, unique perspectives and different people from different backgrounds. In the end, practicing diversity removes barriers to productivity and contributes directly to our business goals."

Many businesses that now endorse diversity programs realize that it helps the bottom line. Diversity helps them achieve new innovations and introduces them into new customer markets.

How does this business model relate to our judicial profession? As I stated before with as many as one-third of some citizens believing that the court system discriminates against individuals on the basis of gender, race, or ethnic origin, we have some marketing to do. The reality is we cannot count on support from other branches of government or the media for assistance.

Only when members of the various minority groups realize that they are welcomed members of our legal community will their perceptions be altered.

What can we do as judges? We need to fully utilize the talents of the personnel we already have employed among us. If appropriate, bring them along and give them a role in your pre program presentations.

Establish retention programs and make sure that there are career paths for your personnel. If further education and credentials are needed along the way, encourage your personnel to grow and challenge themselves.

Establish recruitment programs; make sure that job postings are disseminated to as many different groups as possible.

Lastly, be a mentor to your personnel and to young attorneys outside your chambers. Join an inns of court or a minority bar association. Share with young attorneys who aspire to be on the bench some day the wisdom you have developed.

Diversity programs are difficult - difficult to implement and difficult for some to understand either their necessity or importance.

For many is just plain confusing. That last point has some merit. The 2000 census counted 28 million foreign born residents two-thirds identified themselves as white - thus making white among the most diverse of demographic categories.

For me diversity is personal. My grandparents and mother emigrated from Mexico during the 1920s. Their descendants now carry the family name along with Czech, German, French and Norwegian backgrounds.

Why did I specifically make a reference to Italian Americans at the beginning of this speech? Because 100 years ago, a narrow group of people said that Italians would never fit into the American fabric and those individuals were wrong.

That said, speaking individually as a Mexican American, I believe that those of us of Hispanic descent share the same dreams as past immigrants. We aspire to a better future for ourselves and our children. We seek good paying jobs, a solid education for our children and we desire to own our own home.

I realize that I have focused too exclusively on Latinos in this speech. I apologize for this fact, but I am already conversant with the statistics for this group. In addition, with the time allotted to me here I do not have the time to share with you the facts regarding blacks, Asians, women and others. The bottom line - challenges and opportunities exist everywhere.

With regard to Hispanic Americans, they will become the largest ethnic group in the United States. Projections for the year 2050 predict that Hispanic Americans will comprise twenty-five percent of the total population of this country, and will, therefore, be the largest population group in the nation. Back in Texas, the 2000 census indicates that Latinos will comprise one-third of our

state's population. Within the next 15 to 20 years, it is expected that Hispanics will comprise over fifty percent of the Texas' population.

Eleven percent of Hispanic Americans are under five years of age and a third of Hispanic Americans are under age fifteen. By the year 2030, the United States Bureau of the Census projections suggest that Latino students age five to eighteen will number almost sixteen million – twenty-five percent of the total school population. Obviously, this projected increase in the number of Hispanic children provides critical challenges to the nation's education systems.

Underlying this data is the hard reality that a significant proportion of Hispanic children will continue to grow up in poor households. Such a reality provides an even greater challenge to policy makers and practitioners to aggressively seek solutions to eliminate poverty and low educational achievement. Unless these related issues are addressed, predictable outcomes with the inherent social and public costs will accrue to the nation as a whole.

By the year 2000, up to eighty percent of jobs in the United States are expected to require cognitive, rather than manual skills, and fifty-two percent of jobs are expected to require at least some postsecondary education. The shortage of workers with high levels of communication, mathematics, computer, and other technological skills - already a problem for employers - will become more severe.

Approximately thirty-seven percent of employed Hispanic Americans do not have a high school degree compared to thirteen percent of all workers.

Unemployment rates for workers with less than four years of high school are twice as high as the rates for high school graduates.

Additionally, only eleven percent of the Hispanic American work force is in managerial and professional positions compared to twenty-seven percent of the non-Hispanic population.

But there is good news:

In 1992, there were approximately 720,000 Hispanic-owned businesses in the United States that employed four million people and had annual revenues of \$63 billion per year.

American companies, recognizing the potential of Hispanic markets, engage in aggressive, competitive strategies, to attract, recruit, and hire Hispanic men and women with postsecondary degrees - efforts that have just begun to give Hispanics access to most levels of the corporate work force.

Despite the challenges and obstacles I briefly outlined here, I remain an optimist - about life, the future of America, and the future of all those who call themselves Americans - newly immigrated or native born.

I received that optimism from my father who spoke Spanish growing up in the Westside of San Antonio. A man raised by a single mom. A man reared during the depression and who only

received a sixth grade education before he had to work and help support his mother. A man who served his country on the beaches of Normandy.

His hard work and sacrifice enriched America. His four sons (with their combined eight university degrees and three military commissions) build on his foundation.

And so the story goes in each and every one of our households. Each one of us here adds a piece to the American quilt. I cannot have anything but optimism about how colorful, unique and strong that collective product will be.

Thank you again for your kind invitation. Much success to you in your judicial career and recall that to those of us that much is given - much is expected in return.